

From: Niemer, James <james.niemer@soundtransit.org>
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To: Savaria, Kathryn
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Attachments: 190206 Proposed Order Denying Wallace's Motion to Clarify Order.docx; 190206 STs Opposition to Wallace's Motion to Clarify Order Granting Pl.docx

From: Niemer, James
Sent: Wednesday, February 06, 2019 10:18 AM
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1 JUDGE ROGER ROGOFF
2 Noted for February 8, 2019
3 Without oral argument
4

5 STATE OF WASHINGTON

6 KING COUNTY SUPERIOR COURT

7
8 VIX TECHNOLOGY (USA), INC., a California corporation,

Cause No.: 18-2-19467-9

9 Plaintiff,

DEFENDANT SOUND TRANSIT'S
OPPOSITION TO WALLACE'S MOTION
TO CLARIFY ORDER GRANTING
PRELIMINARY INJUNCTION

10 v.

11 CENTRAL PUGET SOUND REGIONAL
12 TRANSIT AUTHORITY, dba SOUND
13 TRANSIT, a Washington regional transit
14 authority, and KEVIN WALLACE, an
individual,

15 Defendants.

16 I. **INTRODUCTION**

17 Defendant Sound Transit submits this brief in opposition to the motion of defendant
18 Kevin Wallace (“Wallace”) which, while claiming it is a motion to clarify an Order entered by the
19 previous judge five months ago, is in fact a Motion to Compel discovery from Sound Transit and
20 a Motion for Relief from an Order or Judgment under CR 60. As to the latter, the motion is
21 untimely. As to the former, instead of simply bringing a motion to compel (or even just
22 requesting a conference of counsel under CR 26(i)), Wallace asks this to Court reverse decades of
23 practice under the Civil Rules and obligate Sound Transit, as the party responding to discovery, to
24 seek relief from the Court in the form of a protective order before it would be entitled to object to
25 an interrogatory under CR 33 or a request for documents under CR 34.

STs OPPOSTION TO DEF. WALLACE'S
MOTION TO CLARIFY ORDER GRANTING
PRELIMINARY INJUNCTION

CENTRAL PUGET SOUND REGIONAL TRANSIT
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2 Wallace's motion should be denied. The time for Wallace to seek relief from Judge
3 Chung's Order is long past, and Wallace's counsel has failed to even attempt to arrange a meet-
4 and-confer with Sound Transit's counsel, which is a prerequisite to bringing a motion to compel.
5

II. STATEMENT OF FACTS

6 As noted in Wallace's motion, this case involves a Public Records Act request Wallace
7 submitted to Sound Transit in which he requested that Sound Transit provide him with copies of
8 two applications ("apps") used by Sound Transit Fare Enforcement Officers. One of those apps
9 allows the officers to determine if an Orca card has been charged in connection with the current
10 trip. The other allows them to access a database to determine if the rider has received a prior
11 warning or citation. In accordance with its contract with the manufacturer, plaintiff Vix
12 Technology, Sound Transit informed Vix of the request and afforded it the opportunity to seek to
enjoin the production of the apps. Vix did so, initiating the current litigation and bringing a
motion for a preliminary injunction.

13 In granting Vix's motion, Judge Chung cited RCW 42.56.420(4) and .270(11) as the bases
14 for enjoining Sound Transit "... from releasing any and all documentation with respect to
[Wallace's] Public Disclosure Request PD18-237 ..." Vix's proposed Order in connection with
15 this motion was available to Wallace prior to its execution by Judge Chung. Wallace's counsel
16 did not object to the wording of the proposed Order.

17 Some time after the entry of Judge Chung's Order, Wallace served discovery requests on
18 Sound Transit. Several of those discovery requests, including Interrogatory Nos. 7 and 8¹ and
19 Requests for Production 2 through 5 sought documents and information relating to Wallace's
public records request PD18-237. Because Judge Chung's Order specifically enjoined Sound
20 Transit from releasing documentation relating to that request, Sound Transit objected to those
discovery requests on the grounds that doing so would violate that Order.

21 Thereafter, instead of contacting Sound Transit's counsel to discuss the scope of Judge
Chung's Order or the propriety of Sound Transit's objections to Wallace's discovery requests, or

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25¹ It should be noted that Sound Transit fully responded to these two interrogatories, without waiving its objections
STs OPPOSITION TO DEF. WALLACE'S
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1 to arrange a CR 26(i) conference of counsel, Wallace's counsel elected to engage with Vix's
2 counsel in an attempt to gain an agreement as to the scope and meaning of the Order. See Second
3 George Declaration. The lack of an agreement apparently resulted in this motion, in which
4 Wallace seeks to rewrite Judge Chung's Order, and to restrict Sound Transit's ability to object to
5 discovery requests and require it to file a motion for a protective order before it can interpose any
objections.

6 **III. STATEMENT OF ISSUES**

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1. Whether Sound Transit should be prevented from asserting any objections to discovery unless and until it receives the Court's prior permission to assert an objection.
 2. Whether this Court should modify an Order entered by the previous Judge more than five months ago.

10 **IV. EVIDENCE RELIED UPON**

11 Sound Transit relies on the pleadings and papers on file.

12 **V. AUTHORITY AND ARGUMENT**

13 **A. Wallace Failed to Comply with the Civil Rules Regarding Motions to Compel Discovery**

14 Although self-described as a motion to clarify Judge Chung's prior Order, this is in reality
15 a motion to compel and to limit Sound Transit's ability to assert objections to discovery requests
16 directed to it. In fact, Wallace's proposed Order granting this motion would have the court order
17 " . . . that any protection from discovery, if warranted, must be sought in accordance with the civil
18 rules including CR 26."

19 Granting such an Order would effectively shift the burden, where an appropriate and
20 proper objection to a discovery request has been made, from the propounding party, which would
21 be obligated to arrange for and conduct a discovery conference and then bring a motion to
22 compel, to the responding party, which would under Wallace's scenario be required to seek a
23 protective order *before* asserting an objection. And, contrary to Wallace's assertion, CR 26(c)
24 does not support this argument. Wallace selectively quotes from that Rule, which only applies
when the responding party requires protection from "annoyance, embarrassment, oppression, or

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1 undue burden or expense, . . . “ Wallace failed to include this language when he quoted from CR
2 26(c).

3 Sound Transit did not object to Wallace’s discovery requests because they were annoying,
4 embarrassing, expensive or oppressive. Its objections were based on the clear language of Judge
5 Chung’s Order enjoining it from releasing any and all documentation relating to Wallace’s second
6 public disclosure request. If Wallace believed that Sound Transit’s objection was improper, his
7 counsel should have arranged for and conducted a discovery conference with Sound Transit’s
8 counsel and then, if appropriate, file a motion to compel. This was not done. Consequently, this
9 aspect of Wallace’s motion is improper and should be denied.

10 **B. Judge Chung’s Order Should Stand**

11 Wallace fails to provide this Court with the legal basis that would enable this Court to
12 “clarify” Judge Chung’s Order. Sound Transit submits that this Court’s authority to do so could
13 only flow from CR 60, which allows a court to grant relief from a judgment or order. However,
14 that rule directs that a motion seeking relief from an Order be brought within a reasonable time.
15 In this case, more than five months have passed since Judge Chung’s Order was entered. Wallace
16 could have objected to the Order at the time it was proposed. Wallace’s motion here is not
17 timely, and this aspect of Wallace’s motion should likewise be denied.

18 DATED this 6th day of February 2019, at Seattle, WA

19 By:

20 _____
21 James E. Niemer
22 WSBA # 14477
23 Attorney for Sound Transit

24
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CERTIFICATE OF SERVICE

I do hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the King County Superior Court eFiling system, which automatically sends notifications of this filing to the following:

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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Dated this day of February 2019, at Seattle, Washington.

Alison Hawley-Washington

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JUDGE ROGER ROGOFF
Noted for February 8, 2019
Without oral argument

STATE OF WASHINGTON

KING COUNTY SUPERIOR COURT

VIX TECHNOLOGY (USA), INC., a California corporation,

Cause No.: 18-2-19467-9

Plaintiff,

V.

CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, dba SOUND TRANSIT, a Washington regional transit authority, and KEVIN WALLACE, an individual.

[PROPOSED] ORDER DENYING
DEFENDANT WALLACE'S MOTION TO
CLARIFY ORDER GRANTING
PRELIMINARY INJUNCTION

Defendants.

THIS MATTER having come before the Court on Defendant Wallace's Motion to Clarify Order Granting Preliminary Injunction, and the Court having reviewed Sound Transit's Opposition to said motion, it is hereby ORDERED, ADJUDGED AND DECREED that Defendant Kevin Wallace's motion is DENIED.

DONE IN OPEN COURT this 1st day of February, 2019.

Honorable Roger Rogoff

**ORDER DENYING DEF. WALLACE'S MOTION
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PRELIMINARY INJUNCTION**

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3 Presented by:
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ORDER DENYING DEF. WALLACE'S MOTION
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Page - 2

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